SINGLE BENCH

2

5

CF/100/L

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

W.P.(C) NO. /2006

PETITIONER : Pareva Bai, Aged about 22 years, D/o. Mayaram, W/o. Krishna Ram, R/o. Village Bhitthikala, Ward No. 11, Tahsil Ambikapur, District Surguja (CG)

RESPONDENT NO.1

VERSUS

RESPONDENTS : 1] State of Chhattisgarh, Through: Secretary, Panchayat & Social Welfare, D.K.S. Bhawan, Raipur District Raipur (CG)

P.R. No. 4602/06
Presented by Shri V.A. Goyal
dated 22/8/06

2] Nanki Bai W/o. Putal Ram, Aged about 35 years, R/o. Village Bhitthikala, Ward No. 15 P.S. & Tahsil Ambikapur, District Surguja (CG)

(Respondent/Election petitioner)

3] Krishna Bai W/o. Tiwari, Aged about 28 years, R/o. Village Bhitthikala, Ward No.1, P.S. & Tahsil Ambikapur, District Surguja (CG)

RECEIVED-COPY
22/8/06
CLERK to A. G. BILASPUR

4] Jugmuniya W/o. Ramlal, Aged about 24 years, R/o. Village Bhitthikala, Ward No. 17 P.S. & Tahsil Ambikapur, District Surguja (CG)

5] Majhino Bai W/o. Rameshar, Aged about 30 years, R/o. Village Bhitthikala, Ward No. 10 P.S. & Tah. Ambikapur, District Surguja (CG)

6] Returning Officer, Gram Panchayat, Bhitthikala, Tahsil Ambikapur, District Surguja (CG)

7] Presiding Officer, Voting Booth No. 89, Village Bhitthikala, Ward No. 1 to 7, Tah. Ambikapur, Distt Surguja (CG)

(3) (6)

8] Presiding Officer, Voting Booth No. 90, Village Bhitthikala, Ward No. 8 to 14, Tahsil Ambikapur, District Surguja (CG)

9] Presiding Officer, Voting Booth No. 91, Village Bhitthikala, Ward No. 15 to 20, Tahsil Ambikapur, District Surguja (CG)

Respondent No.3 to 9
(Respondents/Respondents)

10] Collector, Surguja, Distt Surguja (CG)

11] S.D.O. (Revenue)/Specified Officer, Ambikapur, District Surguja (CG)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-78

(84)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

A.F.R.

मामला क्रमांक WP/4566/06 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

31.8.2006

Mr. Manoj Paranjpe, Advocate for the petitioner.

Mr. N.K. Agarwal, Dy. Adv. General for respondent No.1, 10 & 11 on advance copy.

Mr. Praveen Das, Advocate for respondent No.2 on caveat.

Heard learned counsel for the parties.

The matter is being disposed of at the admission stage itself, as very short question is involved in this petition.

By this writ petition, the petitioner has challenged the validity of order-dated 4.8.2006 (Annexure P12) passed by the Specified Officer (Sub Divisional Officer, Ambikapur) in Case No.17/A/89/2004-05 whereby the election of the petitioner herein to the post of Sarpanch, Gram Panchayat Bhitthikala has been declared null & void by allowing the election petition filed by respondent No.2 herein.

Learned counsel for the petitioner submitted that the petitioner was not afforded reasonable opportunity to adduce her evidence, whereas, respondent No.2 herein was given sufficient opportunity to adduce her evidence, which is evident from the fact that evidence of respondent No.2-Nanki Bai herself was recorded on 14.7.2005, whereas, the evidence of her two witnesses was recorded on 18.4.2006, thereafter the matter was fixed for evidence of the petitioner herein on 23.5.2006 and on that date, since the counsel for the petitioner herein was not present, as he was out of station due to his illness, the evidence of the petitioner herein was closed.

On the other hand, learned counsel for respondent No.2 argued that Rule 12 of the Panchayats (Election Petitions, Corrupt Practices and

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(85)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Disqualification for Membership) Rules, 1995 (for short 'Rules, 1995') envisages that *"it shall be the duty of the parties to produce their witnesses on the date fixed for evidence, and they shall not be entitled to an adjournment for non-attendance of their witnesses'*, in the present case, even the petitioner herein failed to examine herself on the date fixed for her evidence i.e. on 23.5.2006. Therefore, the order of Specified Officer is perfect and legal.

Having heard learned counsel for the parties, I have perused the record.

Perusal of record shows that the evidence of respondent No.2 herein was recorded on 14.7.2005 and thereafter the evidence of her two witnesses was recorded on 18.4.2006. Accordingly, respondent No.2 was given more than one opportunity to adduce her evidence and in the case of petitioner herein only on the very first date the evidence was closed and it has been mentioned in the order sheet that both the parties were present, the petitioner herein has not adduced her evidence, therefore, her evidence is closed.

The petitioner's case is that on 23.5.2006 her advocate was not present, as he was out of station and moreover, it has not been recorded in the order sheet that the petitioner herein was asked by the Specified Officer that she can adduce her evidence by engaging another counsel or it has not been recorded that she is not ready to give her evidence. Therefore, it cannot be said that learned Specified Officer gave sufficient opportunity to the petitioner herein to adduce her evidence.

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(86)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

As far as the provisions of Rule 12 of the Rules, 1995 is concerned, it is true that rule provides that it shall be the duty of the parties to produce their witnesses on the date fixed for evidence, and they shall not be entitled to an adjournment for non-attendance of their witnesses, but that does not mean that even in a case of reasonable cause the adjournment shall not be granted.

In order to interpret Rule 12 of Rules, 1995, it is necessary to examine whether the Specified Officer is not entitled to grant adjournments to the parties even after the sufficient & reasonable cause is there. In the matter of Raza Buland Sugar Co. Ltd., Rampur Vs. The Municipal Board, Rampur reported in AIR 1965 SC 895 the Constitution Bench of Hon'ble Apex Court held that;

> "the *question whether a particular provision is mandatory or directory cannot be resolved by laying down any general rule and it would depend upon the facts of each case and for that purpose the object of the statute in making out the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relations of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account in arriving at the conclusion whether a particular provision is mandatory or directory".*

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(87)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In the matter of **Sangram Singh V. Election Tribunal Kotah & Anr.** reported in **AIR 1955 SC 425** the Hon'ble Apex Court held that;

"Considering the provisions of the Code dealing with the trial of the suits, it was opined that:

> 'Now a code of procedure must be regarded as such. It is procedure, something designated to facilitate justice and further its ends; not a Penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it.
>
> There must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(88)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

be construed, wherever that is reasonably possible, in the light of that principle."

Again in the matter of **State of Gujarat V. Ramprakash P. Puri** reported in **1970 (2) SCR 875** the Hon'ble Apex Court has held that:

"Procedure has been described to be a hand-maid and not a mistress of law, intended to sub-serve and facilitate the cause of justice and not to govern or obstruct it. Like all rules of procedure, this rule demands a construction which would promote this cause."

It is useful to quote the oft-quoted passage of Lord Penzance in 1879 (4) AC 504:

" Procedure is but the machinery of the law after all the channel and means whereby law is administered and justice reached. It strongly departs from its office when in place of facilitating, it is permitted to obstruct and even extinguish legal rights, and is thus made to govern which it ought to sub-serve."

It is also useful to reproduce the passage of judgment in the case of **Balwant Singh Bhagwansingh Vs. Firm Raj Singh Baldev Kishen** reported in **AIR 1969 Punjab & Haryana 197**:

" Promptitude and dispatch in the dispensation of justice is a desirable thing but not at the cost of justice. All rules of procedure are nothing but handmaids of justice. They cannot

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(87)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

be construed in a manner, which would hamper justice. As a general rules, evidence should never be shut out. The fullest opportunity should always be given to the parties to give evidence if the justice of the case requires it. It is immaterial if the original omission to give evidence or to deposit process fee arises from negligence or carelessness."

In the matter of **Topline Shoes Ltd., V. Corporation Bank** reported in **(2002) 6 SCC 33** the question for consideration before the Hon'ble Apex Court was that whether the State Consumer Disputes Redressal Commission could grant time to the respondent to file reply beyond total period of 45 days in view of Section 123(2) of the Consumer Protection Act, 1986 and the Hon'ble Apex Court held that:

"..the intention to provide time frame to file reply is really made to expedite the hearing of such matters and avoid unnecessary adjournments. It was noticed that no penal consequences had been prescribed if the reply is not filed in the prescribed time. The provision was held to be directory. It was observed that the provision is more by way of procedure to achieve the object of speedy disposal of the case."

The Hon'ble Apex Court in the matter of **Salem Advocate Bar Association, Tamil Nadu Vs. Union of India** reported in **2005 AIR SCW 3827** while interpreting the provisions of Order VIII Rule 1 of the CPC,

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(90)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —7—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

which prescribes maximum 90 days period for filing the written statement by the defendant, held that;

> "We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to advance the cause of justice and not to defeat it. Construction of the rule or procedure, which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are hand-maid of justice and not its mistress.'

In light of the above principle of law that procedural laws are enacted to facilitate the justice and further its ends and too technical construction of the provisions that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it; procedure are grounded on a principle of natural justice and further that the rules of procedure are made to advance cause of justice and not to defeat it and construction of rule or procedure which promotes justice and prevents miscarriage has to be preferred.

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(71)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Rule 12 of the Rules, 1995, which deals with the production of witnesses by the parties, has been enacted with the intention to expedite the hearing of election petitions and to avoid unnecessary adjournments, as the election petition requires expeditious hearing and parties should not be allowed to take unnecessary adjournments. The true construction of Rule 12 will be that in cases where sufficient and reasonable cause is there, the Specified Officer should give adjournment. Rule 12 does not prohibit adjournments to be granted by Specified Officer where reasonable and sufficient cause exists for the adjournment. The Specified Officer is required to ensure that unnecessary adjournments to delay the proceedings of the election petition should not be granted.

Looking to the facts of the case, it is the duty of the Specified Officer to assess the situation and if he found that the party on account of sufficient & reasonable cause is not able to assist the Court for adducing evidence, in that case, normally, the Specified Officer is required to adjourn the matter, whereas, in the present only on the first date i.e. 23.5.2006, when the petitioner herein herself was present in Court, but her advocate was not present, her evidence was abruptly closed without giving her opportunity to examine herself or she was not asked that if she wants engage another counsel for adducing her evidence, the only thing which has been recorded in the order sheet is that the parties are present and as evidence has not been adduced by the petitioner herein, her evidence was closed, whereas, respondent No.2 has been given more than one opportunity to adduce her evidence.

P.T.O.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

92

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In the circumstances, I am of the considered opinion that the order impugned suffers from perversity, the same is liable to be set aside and the matter deserves to be remanded back.

Accordingly, the petition of the petitioner is allowed, impugned order dated 4.8.2006 (Annexure P-12) is hereby set aside and the matter is remanded back to the Specified Officer (Sub Divisional Officer, Ambikapur) with a direction to decide the matter afresh after giving opportunity to the petitioner to adduce her evidence and for that purpose, parties are directed to remain present before the Specified Officer on 4th October 2006. The petitioner herein to keep all her witnesses present on that date and the Specified Officer to examine all the witnesses produced by the petitioner herein and decide the matter afresh in accordance wit law after hearing both the parties.

In view of above order, M.(W.)P. No.3529/06 and I.A. No.8181/06 stand disposed of.

Certified copy as per rules.

Sd/-
L.C. Bhadoo
Judge

P.T.O.